

UNITED STATES DISTRICT COURT
STATE OF MAINE

FRONTIER COMMUNICATIONS COMPANY,)
)
Plaintiff,) Civil Action No. 07-cv-113
)
v.)
)
BARRETT PAVING MATERIALS, INC., et al)
)
Defendants,)

**DEFENDANT UGI UTILITIES, INC.'S STATEMENT OF MATERIAL FACTS TO WHICH THERE IS NO GENUINE
ISSUE TO BE TRIED**

NOW COMES UGI Utilities, Inc. ("UGI"), by and through its attorneys, Nelson, Kinder, Mosseau & Saturley, P.C. and respectfully submits this Statement of Material Facts to which there is no genuine issue to be tried and in support thereof, states as follows:

1. The Bangor Manufactured Gas Plant ("Bangor MGP") operated from 1852 until 1963 under three different corporation names: Bangor Gas Light Company (1852-1941); Bangor Gas Company (1941 to 1948); Frontier Communications Company (a/k/a Citizens Communications Company) (1948 to 1963). (Exhibit A Recommended Decision Document #152 at 2).
2. Frontier is the corporate successor to all three corporate entities (BGLC/BGC and Citizens) due to corporate mergers. (Exhibit B BAN00492 - 00499)
3. Frontier alleges that the Bangor MGP discharged coal tar wastes to the Penobscot River through the City sewer system from 1850 to 1963. (See Exhibit F BGR000023)
4. According to corporate records, the American Gas Company of New Jersey ("AGCNJ") acquired the voting stock of the Bangor Gas Light Company ("BGLC") in April of 1901. (Exhibit G AGCNJ Letter to Stockholders April 1, 1902 UGIII 0165).

5. American Gas Company of New Jersey owned the stock of BGLC until March 1928 when it sold the stock to American Commonwealth Power (CenterPoint's corporate predecessor). (UGIII 0142)

6. In 1900, UGI was a holding company having interests in a number of gas and electric utilities. In 1925, it acquired control of the voting stock of AGCNJ. (UGIII 0366)

7. BGLC had its own by-laws from 1901 to least 1928 and thereafter. (Exhibit D).

8. BGLC was recognized as a corporate entity by the State of Maine from 1850 to at least 1928 and thereafter. (Exhibit B BAN00492-00493)

9. BGLC was recognized and regulated as a public utility by the Maine PUC from 1915 to at least 1928 and thereafter. (Exhibit I Selected PUC Reports 1915, 1916, 1924, 1925, 1927, 1928).

10. BGLC filed Annual Reports with the PUC providing all financial and operating data and identifying the officers, directors, stockholders and manager of the company for each year after 1915. (Exhibit I).

11. BGLC had corporate officers and directors from 1901 to at least 1928 and thereafter and held annual Stockholder Meetings on the Fourth Wednesday of May and Director Meetings as necessary. (See Exhibit D By-Laws; Exhibit I AGCNJ Minutes UGIII0159 to 0340).

12. BGLC had a local manager or superintendant of the Bangor MGP from 1901 to at least 1928 and thereafter. The Local Manager was an employee of BGLC and a member of the Board of Directors. (Exhibit I).

13. The day-to-day operations of BGLC were conducted by the employees including foremen, gas makers, engineers, former inspectors, laborers and others under the supervision of the local manager or superintendant. (Exhibit H; Performance Test of Coal Gas Plant 1925 MID00222 – 00264.)

14. BGLC's financial records were independently audited from 1901 to 1928. (See, e.g. Exhibit J, 1902 - UGIII 0245; 1903 - UGIII 0249; 1904 - UGIII 0257; 1912 - UGIII 0210; 1915 - UGIII 0215; 1918 - UGIII 0219; 1924 - UGIII 0226; 1925 - UGIII 0229; 1926 - UGIII 0231).

15. BGLC Directors from 1901 to 1928 always included the local manager and usually included another local Maine resident on the 5-member Board. (Exhibit I).

16. During the course of its ownership of the capital stock of the Bangor Gas Light Company, the AGCNJ issued Annual Reports to its stockholders (1901 – 1927) which contained general information about the operations of the American Gas Company and each of its subsidiaries including separate information for each subsidiary. (See Exhibit G American Gas Company of New Jersey Annual Report for the year 1901 (UGIII 0168 – 0168A) and UGIII 0159 - UGIII 0340 relating to years 1902 through 1926).

17. Throughout the period of time when American Gas Company of New Jersey owned the corporate stock of the Bangor Gas Light Company, the two companies had some common Directors and Officers but the overlap was never complete. For most of this period, at least two of the five Directors were residents of Bangor, one of whom was the Manager of the Bangor Gas Light Company. (Exhibit I)

18. In 1925, UGI merged with the American Gas Company of Pennsylvania which owned all of the stock of the American Gas Company of New Jersey. Accordingly, UGI became owner of the stock of American Gas Company of New Jersey and became its parent corporation. AGCNJ continued to be the corporate parent of the Bangor Gas Light Company until 1928 when the stock of BGLC was sold by AGCNJ. (UGIII 0001 - 0035; UGIII 0366 to 0384)).

19. On January 1, 1927, Bangor Gas Light Company and UGI executed an agreement for supervision of operations whereby BGLC retained UGI as its general operating construction and financial advisor for a period of five years. (Exhibit L UGIII 0341 - UGIII 0365). The agreement provided, *inter alia*, that BGLC retained UGI as a "general operating, construction and financial advisor" and that during the existence of the agreement UGI would be "considered an employee of BGLC". (Exhibit L).

20. On February 28, 1928, the contract for supervision of operations of BGLC by UGI was canceled. (Exhibit L UGIII 0342).

21. The UGI Management Company Minutes dated January 19, 1928 reflect that on January 18, 1928, as acting Vice President of the American Gas Company, Mr. Bodine had entered into a contract with Frank T. Hollswit, President of the American Commonwealth Power Corporation for the sale of the capital stock of the Bangor Gas Light Company. The contract designating March 1, 1928 or prior thereto, at the discretion of American Commonwealth Power Corporation as the date of settlement. (UGIII 140).

22. On February 14, 1928, at a special meeting of the American Gas Company Board of Directors, the Board approved the contract with American Commonwealth Power Corporation for the sale of BGLC stock for \$330,000. (UGIII 0160).

23. On March 20, 1928, the AGCNJ Board of Directors noted that BGLC had been sold in accordance with directions of the Board on March 1, 1928. (UGIII 0162-1063)

24. After the sale of the Bangor Gas Light Company by AGCNJ to American Commonwealth Power Company, the Bangor MGP continued to operate first under CenterPoint's predecessor and then under Frontier's predecessor from 1928 until 1963.

Respectfully submitted,

UGI Utilities, Inc.

By its attorneys,

Nelson, Kinder, Mosseau & Saturley, P.C.

Dated: November 5, 2009

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2009 a true copy of the foregoing will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ E. Tupper Kinder
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